S.B. Civil Writ Petition NO.4075/2004

Chunni Lal Vs. Jawan Mal & Anr.

Date of Order : 03-12-2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. Dinesh Mehta, for the petitioner.

Nobody appeared for the respondents after service of notice.

Heard learned counsel for the petitioner.

It appears from the facts of the case that petitioner sought to produce witness Mansa Ram before the trial Court as his witness but the trial Court vide order dated 16.9.2004 closed the evidence of the petitioner-defendant. This Court passed the interim order dated 24.9.2004 which is as under:-

"Issue notice to show cause.

Notice of stay application as well. Notices are made returnable in four weeks and be given dasti.

Meanwhile, if on the next date of hearing fixed in the trial Court, which is said to be 30.09.2004, the petitioner produces the witness Mansa Ram, the learned trial Court shall record his statements, subject to payment of cost of Rs.2,000/-. In case the opposite party still objects to recording

> statement of Mansa Ram, in that event, further proceedings in trial Court, shall remain stayed."

Learned counsel for the petitioner submits that after the order dated 24.9.2004, the petitioner produced the witness Mansa Ram and paid the cost as ordered by this Court and the petitioner's witness has already been cross-examined by the respondent No.1. In view of the above fact that petitioner produced his witness and paid the cost in pursuance of the order dated 24.9.2004 to the respondent No.1 or his counsel, then naturally the petitioner accepted the order dated 24.9.2004 and cannot challenge that order after accepting benefit of the order dated 24.9.2004 by receiving the cost as awarded in the said order.

In view of the above, the order dated 16.9.2004 is set aside and the evidence of the petitioner's witness Mansa Ram shall treated as on record of the trial Court. The writ petition is allowed as mentioned above.

[PRAKASH TATIA],J.

Praveen